**U.S. COMMODITY FUTURES TRADING COMMISSION**
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| KENNETH A. ROGERS,<br>Complainant | ) | |
| v. | ) | CFTC Docket<br>No. 03-R019 |
| CAROL ANN HURLEY, MICHAEL TIMOTHY MCCARTHY, and REFCO, L.L.C., (d.b.a. "LIND-WALDOCK DIVISION OF REFCO, L.L.C."),<br>Respondents | ) | Served by Federal Express |

## FINAL DECISION

Complainant initiated this reparations case selecting a voluntary decisional proceeding, a choice concurred in by the respondents. In a voluntary proceeding, the parties submit their dispute on the papers only, waiving their right to present oral testimony. In addition, the judge is not authorized to conduct discovery on his own motion (see Rule 12.34), leaving the parties solely responsible for the development of the record. When the record is closed, the judge issues a Final Decision containing only a conclusion whether any violations of the Commodity Exchange Act have been proven, and, if so, a reparation award for any damages caused by such violations (see Rule 12.106(b)). The decision does not contain findings of fact or other evidentiary evaluations by the judge. The Final Decision is not appealable to the Commission or to any court.

In this matter, both sides took discovery. Respondents submitted a formal verified final statement, and complainant submitted comments on the evidence that are considered to be the equivalent of a verified statement. The decision is based on the written record and the official registration records of the Commission.[1]

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[1] The parties are in dispute over representations concerning respondent Hurley's "experience." The parties are hereby notified that because of this dispute, judicial notice has been taken of the official registration records of respondent Hurley held at the National Futures Association by authority delegated to NFA by the Commission. These records have been considered to the extent that they show that Ms. Hurley has been registered under the Commodity Exchange Act since August 2001. If any party wishes to challenge the taking of judicial notice, a motion for reconsideration may be filed provided it is sent by overnight delivery service no later than May 22, 2003, both to the CFTC and to the opposing side. *Any such motion must be strictly limited to challenges as to the accuracy of the information obtained from NFA, and shall not include arguments regarding any other aspect of this Final Decision.*

On this record, it is determined that complainant has demonstrated by a preponderance of the evidence that respondents Refco and Hurley violated Section 4b(a)(2)(ii) and (iii) of the Commodity Exchange Act, causing complainant damages in the amount awarded. It is further concluded that respondents Hurley, and therefore her employer Refco, violated Commission Rule 166.2 by making trades in complainant's futures account without specific authorization, but this violation has not been shown to have led to any damages.

Finally, it is concluded that complainant has not established any violations engaged in by respondent McCarthy. Therefore, the complaint is DISMISSED as against respondent McCarthy.

Based on the violations found, respondents Hurley and Refco are ORDERED to pay reparations to the complainant in the amount of $6,729.29, plus costs of $50.00.

Dated: May 15, 2003

Joel R. Maillie

JOEL R. MAILLIE
Judgment Officer